IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4167 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PARIKH SWITCH GEARS AND OTHERS
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :
MR RD DAVE for Applicants.
MR PRADIP BHATE, APP for Respondent No. 1.
None for Respondent No.2.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 23/02/2006

ORAL JUDGMENT

By filing this application, the applicants have prayed that Criminal Case No.2243/1994 pending before Judicial Magistrate, First Class, Gandhidham, which is instituted by respondent No.2 may be quashed.

Aforesaid complaint is filed by respondent No.2 for the offences punishable under the provisions of the Standards of Weights and Measures Act, 1976. It is alleged in the complaint that there is violation of rule and provisions of the said Act.

Mr.Dave, learned advocate for the applicants submitted that the applicants are entitled to exemption as per Rule 34 of Standards of Weights and Measures (Packaged Commodities) Rules 1977, since according to him, it is an industrial product and it is covered under Rule 34.

After arguing this matter for some time, in order to take aforesaid defence in pending trial, he is not pressing this application so far as applicant No.1-Ms.Parikh Switch Gears, applicant No.2-Mr.Rohitbhai V. Modi, applicant No.3-Mr.Kishore Kumar A. Gandhi and applicant No.4-Mr.Pramodbhai V. Modi are concerned. He submitted that if point regarding exemption under Rule 34 is raised by the applicants, learned Magistrate may consider the same as a preliminary point and find out whether the applicants are entitled to exemption under Rule 34 and whether it is an industrial product.

Permission to withdraw this application is granted so far as applicants No.1 to 4 are concerned. Accordingly, this application is disposed of as withdrawn so far as applicants No.1 to 4 are concerned. It will be open for the applicants No.1 to 4 to prefer appropriate application before the trial Court to decide as a preliminary point the question about whether the applicants are entitled to get benefit of Rule 34. If such application is filed, learned Magistrate may decide the same in

accordance with law. Ultimately, if the Court comes to the conclusion that the applicants are not entitled to exemption as claimed by them, the trial Court may decide the matter on other points.

So far as applicants No.5 to 7 are concerned, it is submitted by learned advocate Mr.Dave that they are ladies and they were nominal partners. He further submitted that applicants No.5 to 7 were not taking active part in the business of the firm as they are housewives. He submitted that even in the complaint there is not a single line stating that applicants No.5 to 7 were actively associated with the business of the firm. To substantiate his say, Mr.Dave has relied upon the decision of the Apex Court reported in (2004) 7 SCC 15.

Mr.Bhate, learned APP submitted that no specific role is attributed to the applicants No.5 to 7 in the complaint, however, since names of the applicants No.5 to 7 have been given by the managing partner, all the aforesaid applicants are joined in complaint.

Since it is not in dispute that no specific role is attributed to the applicants No.5 to 7, who according to Mr.Dave are nominal partners and are housewives, this application is allowed so far as applicant No.5-Mrs.Harshaben K. Gandhi, applicant No.6-Mrs.Bharatiben P.Modi and applicant No.7 – Mrs.Sushilaben R. Sura are concerned and Criminal Case No.2243/1994 pending before Judicial Magistrate, First Class, Gandhidham is quashed so far as applicants No.5 to 7 are concerned. Rule is made absolute so far as applicants No.5 to 7 are concerned. However, ultimately, if it is found that applicants No.5 to 7 were also actively associated with the business of the firm and were doing day-to-

day business, it will be open for the concerned Court to join them again as accused during trial.

(P.B.MAJMUDAR, J.)

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